

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the Matter of the Application of)
Lincoln County for) MEMORANDUM
Approval of Amendments to) AND ORDER
Its Local Air Pollution)
Control Program.)

MEMORANDUM

1. Lincoln County (the County) has filed an application with the Board of Environmental Review (Board) seeking approval of amendments to the County's local air pollution control program. The Board conducted a public hearing to consider the County's application at the Board's public meeting on March 23, 2005, in Helena, Montana.

2. The County operates a local air pollution control program approved by the Board. The program was first approved by the Board's predecessor, the Montana Board of Health and Environmental Sciences (BHES), on November 15, 1991. Revisions to the program have been approved over the years by BHES and the Board, with the most recent revisions being approved by the Board on February 1, 1996.

3. The program is known as the Lincoln County Air Pollution Control Program (the Program).

4. Except as otherwise specified in the Program, the Program encompasses the Air Pollution Control District, as defined in the Program, including the City of Libby and surrounding area.

5. The County seeks approval of amendments to the Program. A copy of the Program regulations is attached to this Order as Exhibit A.

6. The amendments include:

1 (a) Changes in general structure, including rearrangement of subchapters and
2 paragraphs within subchapters, grammatical revisions, and updates to references for
3 internal and external citations.

4 (b) Revisions to General Provisions in Subchapter 1 including the revision of
5 intent, scope, contingency measures, enforceability, and conflict of ordinance provisions.

6 (c) Revision of definitions in Subchapter 1.

7 (d) Revisions to Solid Fuel Burning Device Regulations in Subchapter 2,
8 including revisions in intent, scope, and effective date provisions; revisions to definitions;
9 revisions to require permits for woodstoves meeting certain emission limits and to
10 prohibit installation and operation of woodstoves that exceed certain emission limits;
11 revisions to air pollution alert ambient levels and restrictions to woodstove operation
12 during an air pollution alert; revisions to increase penalty assessments; revisions to
13 restrict woodstove burning to pellet devices as the contingency measure.

14 (e) Revisions to Dust Control Regulations in Subchapter 3, including
15 revisions in intent; revisions to scope and effective date provisions; revisions to
16 definitions, revisions to require the exclusive use of de-icer and to restrict sanding to
17 emergency situations; revisions to require the use of reasonably available control
18 technology in removing carry-on or other road accumulations to minimize fugitive dust
19 from roads; revisions to require owners of commercial lots to clean approaches to roads;
20 revisions to require testing of applied road materials; revisions to require a system of
21 street sweeping; revisions to enlarge the Regulated Road Sanding and Sweeping District
22 to encompass the Air Pollution Control District as a contingency measure.

23 (f) Revisions to Outdoor Burning Regulations in Subchapter 4, including
24 revisions in intent, revisions to scope and effective date provisions; revisions to prohibit

1 burning certain materials; revisions to restrict periods when outdoor burning is allowed;
2 revisions to eliminate trade waste and Christmas tree burning; revisions to provisions for
3 firefighter training burning, commercial film production burning, fuel hazard reduction
4 burning, and licensed landfill burning; revisions to create provisions for management
5 burning and permits for residential burning; revisions to the defined geographic areas
6 and time periods subject to regulation; and revisions to general compliance and
7 permitting requirements.

8 7. After publishing notice to the public, and after public hearing, the Lincoln County
9 Commissioners and Libby City Council approved the Program amendments on February 27,
10 2006.

11 8. Under Section 7-5-105, MCA, the local ordinances approving the Program
12 amendments become effective 30 days after second and final adoption.

13 9. Under Section 7-11-1107, MCA, within 30 days after publication of notice of
14 adoption of the Program amendments, a protest by more than 50% of the electors, or a protest by
15 the owners of more than 50% of the taxable value of the property in Lincoln County or the City
16 of Libby would void the ordinance for that jurisdiction. The County does not expect a protest.

17 10. The Program, as proposed to be amended, would provide for requirements
18 compatible with those imposed by the Clean Air Act of Montana and rules adopted under that
19 act.

20 11. The proposed amendments would make the Program more stringent than
21 comparable state or federal air quality regulations or guidelines in the following respects:
22 Provisions in Program rules under Subchapter 4 regarding outdoor burning regulations contain
23 more restrictions for conducting outdoor burning activities than comparable state rules.
24

1 12. The Lincoln County Commission and Libby City Council provided the
2 opportunity for public comment, held a hearing, and made a written finding, after the hearing and
3 comment period, that Subchapter 4 provisions for outdoor burning protect public health or the
4 environment of the area, can mitigate harm to the public health or the environment, and are
5 achievable with current technology. The written finding referenced peer-reviewed scientific
6 studies supporting the findings and a statement regarding costs to the regulated community. The
7 finding was included as part of the public hearing record.

8 13. The Program, as proposed to be amended, would provide for enforcement of its
9 requirements by appropriate administrative and judicial processes.

10 14. The Program, as proposed to be amended, would provide for administrative
11 organization, staff, financial resources, and other resources necessary to effectively and
12 efficiently carry out the Program.

13 15. Implementation of the Program, as proposed to be amended, is not intended in
14 any way to interfere with retention of jurisdiction by the Montana Department of Environmental
15 Quality over those emission sources and activities not expressly subject to County jurisdiction.

16 16. Under Section 75-2-301(1), MCA, a municipality or county may establish and
17 administer a local air pollution control program if the program is consistent with the Clean Air
18 Act of Montana and is approved by the Board.

19 17. Under Section 75-2-301(1) and (2), MCA, if a local air pollution control program
20 proposed by a county would encompass all or part of a municipality, the county and each
21 municipality must approve the program after a public hearing.

22 18. Under Section 75-2-301(3)(a), the Board, by order, may approve a local air
23 pollution control program that:
24

1 (a) provides by ordinance or local law for requirements compatible with, more
2 stringent than, or more extensive than those imposed by Sections 75-2-203, 75-2-204, 75-2-211,
3 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402, MCA, and rules adopted under
4 those sections;

5 (b) provides for enforcement of requirements by appropriate administrative and
6 judicial processes; and

7 (c) provides for administrative organization, staff, financial resources, and other
8 resources necessary to effectively and efficiently carry out the program.

9 19. The Program satisfies the requirements for Board approval set forth in Section
10 75-2-301(3)(a), MCA.

11 20. Under Section 75-2-301(4)(a), MCA, the Board, by order, may approve a local air
12 pollution control program rule, ordinance, or local law that is more stringent than comparable
13 state or federal regulations or guidelines only if.

14 (a) a public hearing is held;

15 (b) public comment is allowed; and

16 (c) the Board or local air pollution control program makes a written finding after the
17 public hearing and comment period that is based on evidence in the record that the proposed
18 local standard or requirement:

19 (i) protects public health or the environment of the area;

20 (ii) can mitigate harm to the public health or the environment; and

21 (iii) is achievable with current technology.

22 21. Under Section 75-2-301(4)(b), MCA, the written finding required under Section
23 75-2-301(4)(a), MCA, must reference information and peer-reviewed scientific studies contained
24 in the record that form the basis for the Board's or the local air pollution control program's
conclusion. The written finding must also include information from the hearing record regarding

1 costs to the regulated community that are directly attributable to the proposed local standard or
2 requirement.

3 22. The written finding of the Lincoln County Commission and Libby City Council
4 satisfies the requirements of Section 75-2-301(4), MCA.

5 23. Adequate notice to the public and the opportunity for public participation has
6 been provided in accordance with Title 2, chapter 3, part 1, MCA.

7 24. Pursuant to Section 75-2-301(13)(b), MCA, at least 30 days prior to adoption of
8 the Program amendments the County and the City of Libby gave written public notice of their
9 intended action, and the notices met the requirements of Section 75-2-301(13)(c), MCA.

10 25. Pursuant to Section 75-2-301(13)(e), MCA, at least 30 days prior to adoption of
11 the Program amendments, copies of the proposed Program amendments were mailed to all
12 persons on the interested persons list maintained by the County under Section 75-2-301(13)(a),
13 MCA.

14 26. Pursuant to Section 75-2-301(13)(g), MCA, the County prepared written
15 responses to all comments submitted in writing or presented at the local public hearings on the
16 proposed Program amendments.

17 27. The County will inform all persons who submitted written comments or attended
18 the local public hearings of the final action on the proposed Program amendments.

19 **ORDER**

20 1. The Board hereby approves amendment of the Lincoln County Air Pollution
21 Control Program, as set forth in Exhibit A, contingent and effective upon expiration of the 30-
22 day period for each local ordinance to become effective, as provided under Section 7-5-105,
23 MCA.

Deleted: and expiration of the 30-day
protest period p

2. Within ten (10) calendar days after expiration of the 30-day delayed effective period required under Section 7-5-105, MCA, the Chief Executive Officer of the Lincoln County Health Department, or his/her representative, shall notify the Board of the status of local approval of the Program amendments and shall submit documentation that the Program amendments have become effective on the local level. The Secretary of the Board shall attach that documentation to the original of this Order and shall provide a copy of the Order with the documentation of local approval to the Department of Environmental Quality's Air Resources Management Bureau County Air Pollution Control Program Coordinator.

3. The County shall inform all persons who submitted written comments or attended the local public hearings of the final action on the proposed Program amendments.

4. The Department shall retain control over any air pollutant sources regulated under the Clean Air Act of Montana that are not covered by the Lincoln County Air Pollution Control Program.

DATED this _____ day of _____, 2006.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
JOSEPH W. RUSSELL, M.P.H.,
Chairperson